MONTANA LEGISLATIVE HISTORY

Chapter 2 1991

Bill H _____ S 5 Original bill & history X C

H. Committee on BUSINESS & ECON. DEVELOPMENT			S. Committee on BUSINESS & INDUSTRY		
Hearing Date(s)	1/18	X C	Hearing Date(s)	1/9	X C
EXEC. ACTION	1/18	X C	EXEC. ACTION	1/9	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes X No

Committee _____ Report _____

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE AND FOR EXPANDED CAPITOL POST-OFFICE SERVICE DURING THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) The following amounts are appropriated from the general fund for fiscal years 1991, 1992, and 1993 for the operation of the 52nd legislature and costs of preparing for the 53rd legislature:

House of Representatives	$2,388,301
Senate	$1,467,689
Legislative Council	$ 641,207
Department of Administration	$ 2,300

(2) The appropriation to the department of administration is for additional personnel to provide capitol post-office service to the public during the regular session. The appropriation to the legislative council includes $3,500 to reimburse the department of administration for costs associated with making the state's financial adviser available for consultation with the legislature.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved January 17, 1991.

CHAPTER NO. 2

[SB 5]

AN ACT TO GENERALLY REVISE THE SECURITIES ACT OF MONTANA; REVISING EXEMPT TRANSACTIONS; CLARIFYING PHYSICAL DELIVERY OF COMMODITIES; EXPANDING THE DEFINITION OF SECURITY; MODIFYING THE REQUIREMENTS FOR FILING REGISTRATION STATEMENTS; AMENDING SECTIONS 30-10-103, 30-10-201, 30-10-206, 30-10-208, AND 30-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-103, MCA, is amended to read:

1/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/18	2ND READING PASSED	43	2
1/19	3RD READING PASSED	44	1
	TRANSMITTED TO HOUSE		
1/21	FIRST READING		
1/21	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
1/28	HEARING		
2/02	COMMITTEE REPORT—BILL CONCURRED		
2/04	2ND READING CONCURRED	84	16
2/05	3RD READING CONCURRED	85	13
	RETURNED TO SENATE		
2/11	SIGNED BY PRESIDENT		
2/11	SIGNED BY SPEAKER		
2/11	TRANSMITTED TO GOVERNOR		
2/16	RETURNED TO SENATE WITH GOVERNOR'S AMENDMENTS		
2/19	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	50	0
2/20	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
	TRANSMITTED TO HOUSE		
3/12	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	93	5
3/14	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	92	7
3/21	SIGNED BY PRESIDENT		
3/22	SIGNED BY SPEAKER		
3/23	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 190	EFFECTIVE DATE: 3/27/91	

SB 4 INTRODUCED BY HAGER

AMEND THE MONTANA CONSTITUTION TO ALLOW A LEGISLATOR TO ASSUME APPOINTIVE OFFICE UPON RESIGNATION

12/27	INTRODUCED		
12/28	REFERRED TO STATE ADMINISTRATION		
1/07	FIRST READING		
1/08	HEARING		
1/09	COMMITTEE REPORT—BILL NOT PASSED		
1/10	ADVERSE COMMITTEE REPORT ADOPTED (SENATE RULES REQUIRE THAT THIS BILL, PROPOSING AN AMENDMENT TO THE MONTANA CONSTITUTION, PROGRESS THROUGH THE SENATE)	30	20
1/14	2ND READING DO PASS MOTION FAILED	21	29
1/15	3RD READING FAILED	20	30
	TRANSMITTED TO HOUSE		
1/16	FIRST READING		
1/16	REREFERRED TO STATE ADMINISTRATION		
2/07	HEARING		
2/07	TABLED IN COMMITTEE		

SB 5 INTRODUCED BY B. BROWN

GENERAL REVISION OF SECURITIES ACT

BY REQUEST OF STATE AUDITOR

12/27	INTRODUCED		
12/28	REFERRED TO BUSINESS & INDUSTRY		
1/07	FIRST READING		
1/09	HEARING		
1/10	COMMITTEE REPORT—BILL PASSED		

1/11	2ND READING PASSED	50	0
1/12	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/14	FIRST READING		
1/14	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/18	HEARING		
1/18	COMMITTEE REPORT—BILL CONCURRED		
1/19	2ND READING CONCURRED	93	2
1/21	3RD READING CONCURRED	94	3
	RETURNED TO SENATE		
1/23	SIGNED BY PRESIDENT		
1/24	SIGNED BY SPEAKER		
1/25	TRANSMITTED TO GOVERNOR		
1/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 2	EFFECTIVE DATE: 1/29/91	

SB 6 INTRODUCED BY MAZUREK

REVISE UNIFORM STATUTORY RULE AGAINST PERPETUITIES

12/27	INTRODUCED		
12/28	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/16	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED		
1/21	2ND READING PASSED	46	0
1/22	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
1/23	FIRST READING		
1/23	REFERRED TO JUDICIARY		
2/04	HEARING		
2/04	COMMITTEE REPORT—BILL CONCURRED		
2/05	2ND READING CONCURRED	97	2
2/06	3RD READING CONCURRED	99	0
	RETURNED TO SENATE		
2/11	SIGNED BY PRESIDENT		
2/11	SIGNED BY SPEAKER		
2/11	TRANSMITTED TO GOVERNOR		
2/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 26	EFFECTIVE DATE: 10/01/91	

SB 7 INTRODUCED BY MAZUREK

REPLACE UNIFORM FRAUDULENT CONVEYANCES ACT WITH UNIFORM FRAUDULENT TRANSFER ACT

12/27	INTRODUCED		
12/28	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/22	HEARING		
2/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	48	0
2/26	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO JUDICIARY		
3/12	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	83	3
3/18	3RD READING CONCURRED	96	0
	RETURNED TO SENATE WITH AMENDMENTS		
3/23	2ND READING AMENDMENTS CONCURRED	47	0
3/25	3RD READING AMENDMENTS CONCURRED	47	0

SENATE BILL NO. 5

INTRODUCED BY B. BROWN

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE SECURITIES ACT OF MONTANA; REVISING EXEMPT TRANSACTIONS; CLARIFYING PHYSICAL DELIVERY OF COMMODITIES; EXPANDING THE DEFINITION OF SECURITY; MODIFYING THE REQUIREMENTS FOR FILING REGISTRATION STATEMENTS; AMENDING SECTIONS 30-10-103, 30-10-201, 30-10-206, 30-10-208, AND 30-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by ~~subsections~~ subsection (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105 except when registration as a salesman, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other

INTRODUCED BILL
SB 5

financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of such real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(6) "Commodity Exchange Act" means the federal statute

SB 0005/01

of that name as amended on the effective date of this subsection.

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(8) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the

total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(9) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other

person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(iv) a registered broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(vii) such other persons not within the intent of this

subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(iv) supervises employees who perform any of the foregoing.

(b) Investment adviser representative does not include an individual registered as a salesman pursuant to 30-10-201.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the

SB 0005/01

acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(16) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) such other items as the commissioner may by rule or order specify.

(17) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a

security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(18) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(19) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a

security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(20) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(21) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 2. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, investment advisers, and investment adviser representatives. (1) It is unlawful for a person to transact business in this

state as a broker-dealer or salesman, except as provided in 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter;

(c) his only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than $1 million;

(viii) governmental agencies or instrumentalities,

SB 0005/01

whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner; or

(d) he has no place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not he or any of the persons to whom the communications are directed are then present in this state.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the

commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. No registration application of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn before the commissioner approves or denies such registration, without the express written consent of the commissioner.

(6) When the registration requirements are met, the commissioner shall make the registration effective. No effective registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn or terminated without the express written consent of the commissioner.

(7) Except as provided in subsection (6), registration of a broker-dealer, salesman, investment adviser, or investment adviser representative:

(a) is effective until December 31 following such registration or such other time as the commissioner may by rule adopt; and

(b) may be renewed.

(8) The registration of a salesman is not effective

during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(9) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner.

(10) Registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be renewed by filing, prior to the expiration thereof, an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, investment adviser, or investment adviser representative filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of

a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(11) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(12) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, investment adviser, or investment adviser representative if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly

controlling the broker-dealer or investment adviser:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities

agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected; or

(k) has failed to reasonably supervise his salesmen or employees~~,--if-he--is--a--broker-dealer~~, or his investment adviser representatives or employees~~,-if-he-is-an-investment~~

~~adviser~~, to assure their compliance with this act.

(13) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.

(14) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(15) Upon the entry of the order under subsection (12) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman or investment adviser representative, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(16) If the commissioner finds that any registrant or

applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesman, investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(17) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, investment adviser, or investment adviser representative, impose a fine not to exceed $5,000 upon such broker-dealer, salesman, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such broker-dealer, salesman, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer,

salesman, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter."

Section 3. Section 30-10-206, MCA, is amended to read:

"**30-10-206. General provisions regarding registration of securities.** (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. ~~Any document filed under parts 1 through 3 of this chapter or a predecessor law within 3 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.~~ The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in such stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

(b) The commissioner may determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. Every registration shall remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upon request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b); however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said

securities and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesman who offers or sells registered securities must be registered pursuant to 30-10-201.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which:

(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or

(b) are being offered and sold directly by or for the account of the issuer.

(5) No securities registration statement may be withdrawn, whether or not such statement has become

effective, without the express written consent of the commissioner."

Section 4. Section 30-10-208, MCA, is amended to read:

"**30-10-208. Consent to service of process -- manner of service.** (1) Every applicant for registration as a broker-dealer, ~~or~~ investment adviser, ~~or~~ salesman, or investment adviser representative under parts 1 through 3 of this chapter and every issuer which proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor, or administrator which arises under parts 1 through 3 of this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. ~~A person who has filed such a consent in connection with a previous registration need not file another.~~

(2) Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless:

(a) the plaintiff, who may be the commissioner, in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at its or his last address on file with the commissioner; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

Section 5. Section 30-10-209, MCA, is amended to read:

"**30-10-209. Fees.** The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $200 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of

1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than $200 or more than $1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman or investment adviser representative, the fee shall be $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer.

(3) For certified or uncertified copies of any

documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee shall be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee shall be $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) All fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited in the general fund."

NEW SECTION. **Section 6.** **Effective** date. [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **VICE CHAIR SHEILA RICE**, on January 18, 1991, at 9 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: HB 181 and SB 5 were heard. Executive action was taken on HB 181 and SB 5.

HEARING ON HOUSE BILL 181

Presentation and Opening Statement by Sponsor:

REP. DON LARSON, HD 65, Missoula, sponsor of HB 181 said this bill has the approval of the Montana State Council of Fire Fighters Association. It is a consumer protection bill. It has the approval and endorsement of several fire fighters organizations and several realtors. The bill requires the seller of a private residence to give written notice to the buyer as to whether there is or is not a fire or smoke detection device in the dwelling. It encourages but does not require installation of a home smoke detection device. The law requires smoke detection

contain any enforcement conditions.

Closing by Sponsor:

REP. LARSON closed by re-emphasizing that this is a consumer protection bill. It is intended this bill would encourage people to become fire conscious and encourage them to put smoke detector devices in their residences. It has the support of the majority of the firefighting groups across the state and has the support of those people involved. He felt that by going through the real estate agencies homeowners would become more aware of the value of fire detection devices.

HEARING ON SENATE BILL 5

Presentation and Opening Statement by Sponsor:

SENATOR BOB BROWN, Senate District 2, chief sponsor of SB 5, said this bill was introduced at the request of the State Auditor. It is an act to generally revise the Securities Act of Montana; revising exempt transactions; clarifying physical delivery of commodities; expanding the definition of security; modifying the requirements for filing registration statements; amending several sections; and providing an immediate effective date. There are 5 or 6 general divisions to the Securities Act which is Title 30 of the state law that this bill would change. The first change occurs on Page 2 (b) where the Securities Department is given legal authority to require salesmen of securities to register. There is a vagueness in the law as to the actual requirement.

The second change occurs in Section 1 of Pages 4 and 5 and makes it clear that the current commodities investment contract that applies to commodities held as collateral be delivered to a bank rather than to the purchaser. The purpose for this is to stop fraudulent speculators. The third change occurs on Page 10 lines 4-8 changing the definition of securities which is obsolete, and inserting more popular names of securities which need to be specifically mentioned in the law. On page 22, lines 9-12 conform to the first amendment concerning the registration requirement for salesmen of securities. On page 23 this amendment would keep the Department from having to keep duplicate records of various documents when the same information is contained in other documents. On Page 25, line 25 clarifies that the Securities Department of the Auditor's office can charge for making uncertified as well as certified copies of documents. This has been a burden on their budget. He said **Robyn Young** would explain the changes more thoroughly.

Proponents' Testimony:

Robyn Young, Montana Securities Department, spoke in favor of Senate Bill 5. She explained the amendments to SB 5 truly are housekeeping. Her testimony is attached as **EXHIBIT 1.** This bill does not make any policy changes. She urged this bill be given a

Do Pass recommendation.

Opponents: None

Questions From Committee Members:

REP. WALLIN asked about the storage space for these commodities and if they needed a warehouse for them, even if it was out of state. She said the amendment in this bill relates to commodity investment contracts, not to commodities referred to in a previous bill which was a policy bill where this bill is a cleanup bill. Basically, most people would assume that this is included because the current definition says it must be physically delivered to the purchaser and some of these promoters try to claim that delivery to the bank is not the same as delivery to the purchaser, and do not consider delivery to the bank equivalent to delivery to the purchaser.

Closing by Sponsor: **SEN. BOB BROWN closed.**

EXECUTIVE ACTION ON SENATE BILL 5

Motion: **REP. WALLIN MOVED SB 5 BE CONCURRED IN. Motion carried unanimously.**

EXECUTIVE ACTION ON HOUSE BILL 181

Motion: **REP. BACHINI MOVED HB 181 DO PASS.**

Motion: **REP. LARSON** moved to amend HB 181 in Section 2, Page 2, Title 50, Chapter 39 the provisions of which apply to section 1, be stricken and insert Title 30, Chapter 2, part 2. That properly codifies the bill.

Motion: **REP. LARSON** moved to amend HB 181 Page 1, line 24 following "buyer" insert "in the buy-sell agreement". This would specify a written notice should appear in the buy-sell agreement.

REP. CROMLEY said he would concur in the first amendment but not in the second. He felt written notices should be sent later.

REP. HANSON asked if an appraisal that specifically states there is a fire warning device in the house constitutes a written notice? He said his definition of written notice is that an appraisal or some other form would constitute written notice as long as the buyer received a copy of it and it is mentioned in that unit.

CHAIR RICE said they would split the amendments and limit the discussion to the codification.

VOTE: **Amendment 1, on codification passed unanimously.**

CHAIR RICE asked for discussion on the second amendment on the

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL DATE Jan. 18, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE BARNETT	✓		
REP. STEVE BENEDICT	✓		
REP. BRENT CROMLEY	✓		
REP. TIM DOWELL	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. STELLA JEAN HANSEN	✓		
REP. H.S."SONNY" HANSON	✓		
REP. TOM KILPATRICK	✓		
REP. DICK KNOX	✓		
REP. DON LARSON	✓		
REP. SCOTT MCCULLOCH	✓		
REP. BOB PAVLOVICH	✓		
REP. JOHN SCOTT	✓		
REP. DON STEPPLER	✓		
REP. ROLPH TUNBY	✓		
REP. NORM WALLIN	✓		
REP. SHEILA RICE, VICE-CHAIR	✓		
REP. BOB BACHINI, CHAIRMAN	✓		

1-18-91
TDB

HOUSE STANDING COMMITTEE REPORT

January 18, 1991

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 5 (third reading copy -- blue) be concurred in .

Signed: _____
Bob Bachini, Chairman

Carried by: Rep. Bachini

EXHIBIT Exh 1
SB 5 1/18/91

TESTIMONY

January 18, 1991

Senate Bill 5

Robyn J. Young

Montana Securities Department

For the record, my name is Robyn Young. I am the Deputy Commissioner of Securities. I am here representing the State Auditor and Montana Securities Department in support of Senate Bill 5. This bill represents the Department's housekeeping bill. The amendments to the Securities Act contained in this bill are designed primarily to clarify or correct the language contained in the Act.

Section 1 of the bill amends the definitions used in parts 1 through 3 of the Act.

The current definition of a salesman provides a blanket exclusion for a person who represents an issuer in transactions exempt under 30-10-105, MCA. However, we have adopted rules, pursuant to 30-10-105, MCA, which require a salesman to register. Therefore, the proposed amendment is necessary to correct a conflict in our statutes.

Our current statutes exclude from the definition of "commodity investment contract" those agreements through which the purchaser actually receives the commodity within 28 days of payments. We have had some enforcement problems with out of state boiler-room operators which have been selling bank financed, precious metals contracts where the metals are delivered to a bank. These fraudulent promoters have tried to claim that delivery to a bank is synonymous with delivery to the purchaser. This was clearly not the intent of the statute, since we have already provided an exemption from registration for commodities delivered to a bank within seven days. The critical issue is, if the programs are not securities then they are not covered by the antifraud sections of the Act and cannot be regulated at all by the Securities Department. If the language is added, then we can clearly apply the antifraud sections of the act to these promotions.

The current definition of a security does not clearly state that certain options are included. Certain recently adopted and popular hybrid securities, such as index options, puts, calls, straddles, etc. are commonly understood to be securities. However, specifically naming them in the definition eliminates unnecessary arguments. Federally, these securities have been expressly included in the definition of a security for some time.

Ex. 1
1-18-91
SB 5

Section 2 of the bill amends provisions of the Act relating to the registration of broker-dealers, salesmen, investment advisers, and investment adviser representatives.

Presently, as our current statute 30-10-201(12)(k), MCA, reads, only broker-dealers and investment advisers have a responsibility to supervise employees. Officers, directors, branch office managers, and other control persons should also be responsible for such supervision. In Montana, we find that many salesmen are supervised by other salesmen who have the title of branch office manager. By deleting the reference to broker-dealer and investment adviser, it permits the securities department to initiate action against any individual who clearly has the responsibility for supervising an employee.

Section 3 of the bill amends provisions of the Act relating to the information that the department keeps on file concerning registrants.

We want to eliminate the ability of registration applicants to include previously filed documents by reference for the purposes of current registration applications. The right provided by 30-10-206(1), MCA, is not currently used by any issuers. If it was used, it could present problems and delays in processing the application because we would have to locate this old information, some of which is not stored within our office. It is preferable to have all of the necessary information and documents current and easily accessible.

The current statute, 30-10-206(3), MCA, provides that when securities are registered, they may be sold by the issuer, any person on whose behalf the securities are registered, or by a registered broker-dealer. This language appears to require that only broker-dealers need to be registered. Confusion will be avoided by clearly stating that salesmen must also be registered, as currently required under other sections of the Securities Act.

Section 4 of the bill amends provisions of the Securities Act relating to the requirements of filing of a consent to service of process with the Commissioner.

When the investment adviser representative sections were added to the Securities Act, the requirement to file a consent to service of process was inadvertently omitted. We have simply added the term "investment adviser representative" to the other specified applicants who must file a consent as required by 30-10-208(1), MCA.

Presently, under section 30-10-208(1), MCA, any person who has filed a consent to service of process in connection with a previous registration need not file another with a new application. This means the Securities Department must keep these documents indefinitely. In reality, this hasn't been used because the consent is built into the uniform securities application forms that must be used each time the applicant

1-18-91
5

files. Eliminating this section would allow the Department to ease its storage requirements.

Section 5 of the bill amends provisions relating to the fees which the Securities Department may charge.

The Securities Department currently charges 50 cents per page for copies of documents which we provide to the public at their request. The current statute only refers to charging for certified copies. At times we have requests for large volumes of information that does not have to be certified. We need to have the charge clearly stated in the statute.

The State Auditor and the Montana Security Department urge a "do pass" on Senate Bill 5. I would be happy to answer any questions you may have.

RY/me(SB5.tst)

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Business & Econ Dev. COMMITTEE

BILL NO. SB 5 SPONSOR B. Brown DATE Jan. 18, 1991

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY.

WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU WANT TO SUBMIT WRITTEN TESTIMONY.

PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	SUP-PORT	OPP-OSE
Robyn Young	Securities Dept	SB5	X	

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on January 9, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SENATE BILL 5

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, District 2, sponsor of the bill, said the bill was introduced at the request of the State Auditor's Office. Senator Brown stated that the Auditor in Montana is also the Insurance Commissioner. The bill is essentially a housekeeping bill which generally corrects and clarifies the method of language used in the Securities Act, which is titled 30 of this code.

Proponents' Testimony:

Robyn Young, Deputy Commissioner of Securities, representing the State Auditor of Montana and Montana Securities Department, testified in favor of the bill (See Exhibit 1).

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Gage asked in certain circumstances the purchaser is not considered to have received this typical delivery. In as much of that as a commodity investment does not include a contract that requires physical deliver, or are we to understand that under these circumstances those are commodity investment contracts.

Robyn Young responded that Senator Gage was correct and that they have to meet exemption requirements and deliver within seven days.

Senator Gage then asked how that affected people from Florida and all over the country from phoning.

Robyn Young explained that it is not a change in policy but to more clearly incorporate in this section of the act. Salesmen do have to register with their office. And under 105, which is an exemption, that really has to do with private placement and restrictions rather than transactions. They do require the same kind of registration provisions for out-of-state salesmen as for in-state salesmen. One of the reasons for that is that they actively use that to screen out salesmen who have previous records of violations.

Senator Gage asked how they track that, and if it's an on-your-honor type thing.

Young replied that it is, because the Securities Regulatory System is highly computerized and the FCC and the FDM and the State Securities Department all share a computerized system where all important information on licensed security salesmen is kept.

Senator Gage asked what would happen if a salesman called from Florida soliciting and wasn't registered.

Young replied that they encourage all Montana citizens to call the department to double check to see if the salesman who is soliciting on the telephone is registered.

Senator Thayer asked if there was anything a person could do to stop getting called constantly.

Young replied that there was nothing ethical a person can do to stop this soliciting. People who have been victimized in the future because the salesmen share lists of possible victims quite readily.

Young stated that a lot of time is spent warning people about the people who solicit over the telephone because over 80% of enforcement cases involve out-of-state telephone solicitation.

Bart Campbell, committee researcher, stated that in some states they have anti-phone solicitation bills. They require that anyone who is going to solicit by phone within the state must make contact with their agency. They keep a list of people who do not want to be solicited by phone, and it is a violation if you call those people.

Young stated that her department has always supported that.

Senator Thayer asked what the penalty for the violation was.

Campbell stated that generally it is a fairly hefty fine and sometimes they take away their ability to do business in the

state.

Closing by Sponsor:

Senator Brown closed. Senator Kennedy deferred any executive action on SB 5 until Senator Lynch returned.

Senate bill 5 passed unanimously by a roll call vote, and was referred to the consent calendar by unanimous vote.

HEARING ON SENATE BILL 16

Presentation and Opening Statement by Sponsor:

Senator Delwyn Gage, District 5, sponsor of the bill, said senate bill 16 was introduced at the request of the state auditor's office.

Proponents' Testimony:

Dave Barnhill, deputy commissioner of insurance, spoke in favor of the bill (See Exhibit 2).

Stanlee Dull, secretary of Montana comprehensive health association, spoke in support of the bill (See Exhibit 3).

David W. Cunningham, hospital administrator, representing the rimrock foundation, spoke in support of senate bill 16 (See Exhibit 4).

Mona Jamison, an attorney representing rocky mountain treatment center, spoke in support of the bill. She proposed an amendment, not in writing, which is to seriously consider an amendment that would make PPO agreements in this state illegal. She then proposed an amendment (See Exhibit 5).

Pat Melby, attorney representing the rimrock foundation, spoke in favor of senate bill 16 and also supported the amendment that Mona Jamison proposed. He also spoke in support of the language which is currently in Senate Bill 16, at a minimum, expressing that the proposal distributed by Jamison is much clearer, with much less opportunity for interpretation or for avoiding allowing a willing provider to enter into a PPO agreement. Preferred provider organization is a fine concept. An insurance company talks to a health care provider and asks them to lower their rates to x amount. The insured will be encouraged to use the facility and throw a deterrent in their contract if they go someplace else. It works fine in large communities and in areas where one insurance company does not have a near monopoly on health care insurance coverage. It works fine in areas where many hospitals and other health care providers are private or profit hospitals are competing with one another and not with nearby rural hospitals. That same concept will not work fine in rural state Montana. There are very few health care providers in Montana and most are not for profit hospitals; they are religious affiliated hospitals, community hospitals, hospitals owned by the government or by hospital

STANDING COMMITTEE REPORT

January 9, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill 5 (first reading copy -- white), respectfully report that Senate Bill 5 do pass.

Signed: _____
John "J.D." Lynch, Chairman

SB 1/10 11:15